IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Amra Ram & ors Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 586/2004 against the order dated 24-6-2004 passed by the Sessions Judge, Pali, in Criminal Revision No. 50/2003.

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Date of Order: December 15, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. P.N. Mohanani, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
None present for the non-petitioner No.2 though served.

BY THE COURT:

Despite repeated calls, no one appears for the non-petitioner No.2, though served, despite repeated calls.

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code" hereinafter), the petitioners have challenged the order dated 24-6-2004 passed by the Sessions Judge, Pali (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 50/2003, whereby the revision petition filed by the petitioners against the order dated 5-12-2001 passed by the Additional Chief Judicial Magistrate (Communal Riots), Pali (for

short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. Carefully gone through the orders passed by both the Courts below.

The facts and circumstances giving rise to the instant criminal miscellaneous petition are that petitioner No.3 Bhika Ram got the land allotted from the government being adopted son of Poonamji, who was in possession of the government land and on the basis of possession, the allotment was made after his death in favour of his son. The complainant came with the case that the petitioner No.3 is the son of Jawarji and not of deceased Poonamji. The complainant made the statement under Section 202 of the Code before the police and admitted that the natural father of petitioner No.3 was Jawarji, however, Jawarji's brother Poonamji was issueless and, therefore, took the petitioner No.3 in adoption, which has been established by the evidence of witnesses and it was the petitioner No.3 who was in the possession of the land after death of his father Poonamji and accordingly the land was allotted in his favour being the son. However, the complainant intended to purchase the land but could not succeed in purchasing it, whereas the land was sold by petitioner No.3 to Madi Bai and the petitioners No.1 and 2 are the attesting witnesses to the sale deed.

At any rate, from the evidence available on record,

there is no evidence of forging the document or using it as genuine or entering into a criminal conspiracy or cheating. The complainant has no interest in the land allotted to the petitioner No.3. In the circumstances, therefore, in my view, there is no ground to proceed against the petitioners. Both the Courts below fell in error in not considering this fact, more particularly the statement of non-petitioner No.2 recorded under Section 202 of the Code. In this view of the matter, the criminal miscellaneous petition deserves to be allowed.

In the result, the criminal miscellaneous petition is allowed. The impugned orders passed by the trial Court as well as the Revisional Court are set aside. The proceedings against the present petitioners stand quashed.

(H.R. PANWAR), J.

mcs